

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 10, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHNATHON B.,¹

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,²

Defendant.

No. 4:24-cv-5108-EFS

**ORDER REVERSING THE
ALJ'S DENIAL OF BENEFITS,
AND REMANDING FOR
MORE PROCEEDINGS**

Plaintiff Johnathon B. asks the Court to reverse the
Administrative Law Judge's (ALJ) denial of Title 16 social-security-

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Leland Dudek has been named the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 income benefits. Plaintiff claims that his mental impairments are so
2 severe that he is unable to work. Because substantial evidence does not
3 support the ALJ's evaluation of the evaluating psychological opinions,
4 the ALJ erred. This matter is remanded for further proceedings.
5

6 **I. Background**

7 On December 9, 2020, at the age of 23, Plaintiff applied for
8 benefits under Title 16.³ After the agency denied benefits, ALJ Stewart
9 Stallings held a telephone hearing in August 2023, at which Plaintiff
10 and a vocational expert testified.⁴
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12 **A. Plaintiff's Testimony**

13 Plaintiff, a high school graduate with an individualized education
14 plan, testified that he has difficulty staying focused and as a result he
15 failed his community-college classes during the two semesters he
16 attended.⁵ He stated that he either hyper fixates on random things or
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20 ³ AR 169–80.

21 ⁴ AR 40–64.

22 ⁵ AR 46–50.
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1 lacks the energy to do simple, basic tasks.⁶ He shared that he gets
2 easily emotional if he is told he is wrong, that he has difficulty
3 communicating and making connections with others, and that he gets
4 overwhelmed in large settings, often using headphones to block out his
5 surroundings.⁷ He stated that chaotic noises overwhelm him, causing
6 him to shut down.⁸ He testified that when he gets angry, he will raise
7 his voice and sometimes throw or break things.⁹

9 Plaintiff shared that he lives with his fiancé and their two
10 toddlers.¹⁰ They share in parenting responsibilities, along with a friend
11 who comes over to help with the children.¹¹ He testified that, due to his
12 tendency to fixate on a particular thing, he has difficulty remembering
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16 ⁶ AR 56.

17 ⁷ AR 54–55.

18 ⁸ AR 50–51.

19 ⁹ AR 53.

20 ¹⁰ AR 48–49.

21 ¹¹ AR 48–49, 55.

1 to take out the trash or do self-care, such as showering.¹² Plaintiff
2 acknowledged that he will self-isolate for 2–3 hours a day to ensure he
3 does not get too overwhelmed or worked up.¹³ Plaintiff testified that he
4 suffers from depression and when his symptoms are more severe, he
5 loses interest in video games and technology and has difficulty leaving
6 the house, which occurs about six days per month.¹⁴
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8 **B. Counseling Records**

9 Plaintiff sought counseling services in December 2021.¹⁵ The
10 initial behavioral health evaluation notes that Plaintiff reported
11 problems with low motivation, irritability, depression, feeling
12 worthless, and worrying, but that he did not report problems with
13 focus, concentration, or discomfort in large groups.¹⁶ Plaintiff was
14 observed with intermittent eye contact, as being pleasant and
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17 ¹² AR 51–52.

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19 ¹³ AR 54–55.

20 ¹⁴ AR 55–56.

21 ¹⁵ AR 49, 53, 295–344.

22 ¹⁶ AR 339–41.

1 adequately dressed, and as groomed with linear thought stream and
2 clear and coherent speech. The counseling notes of record over the next
3 year reflect varying mental-health symptoms:

- 4 • January 2022: Plaintiff reported distractedness, self-doubt,
5 limited self-confidence, difficulty going out, and doing less
6 activities.
- 7 • March 2022: Plaintiff reported depression, being exhausted,
8 having less patience with his children, and excessive worrying,
9 and he was observed casually dressed and groomed with good
10 insight, normal speech, and motivated to reduce mental-health
11 symptoms.
- 12 • May 2022: Plaintiff observed as casually dressed and mildly
13 unkempt with a flat and guarded affect, good insight, and
14 motivated to reduce symptoms.
- 15 • August 2022: Plaintiff reported that he was “doing alright” but
16 was having difficulty managing the stress with his fiancé and
17 kids, and he was observed with a flat affect but with good
18 insight and normal speech.
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- September 2022: Plaintiff was casually dressed and groomed with good insight, flat affect, and normal speech with latent responses.
- October 2022: Plaintiff presented with unkempt hair, body odor, good insight, restricted affect, and normal speech.
- November 2022: Plaintiff presented as casually dressed with mildly unkept hair and clothes, good insight, and normal affect and speech.
- December 2022: Plaintiff reported a need to work on his impulse control so he could interact better with his fiancé and children, and he was observed as casually dressed and groomed with fair insight, flat affect, and normal speech.
- January 2023: Plaintiff was observed as casually groomed with unkempt hair, well-modulated speech, linear and logical thought process, and a reported mood of within normal limits. The counselor noted that the examining psychologist Kenneth Cole, PsyD, recommended weekly counseling sessions; Plaintiff agreed with the counselor to sessions twice a month when

1 available. The counselor also noted that Plaintiff was fearful of
2 failing at treatment because he failed in prior treatment.

- 3 • February 2023: Plaintiff was concerned about starting the
4 recommended medication and was observed with a flat affect,
5 restricted but linear and logical thought process, and with
6 well-modulated speech.
- 7 • March 2023: Plaintiff was observed as casually dressed with
8 unkempt hair, good insight, flat affect, and normal speech.¹⁷

10 **C. Psychological Evaluations**

11 A couple months before initiating counseling in 2021, Plaintiff
12 had a psychiatric disability evaluation with Ryan Marendiuk, Psych.
13 MHNP, which included a clinical interview, mental status
14 examination, and brief intellectual testing.¹⁸ During the clinical
15 interview, Plaintiff said that he had difficulty mentally doing basic
16 tasks because he has a hard time focusing and can be forgetful, and
17 that he has difficulty communicating with people as he does not
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21 ¹⁷ AR 295–344.

22 ¹⁸ AR 278–86.

1 understand what people are saying sometimes and that he conveys the
2 wrong message. He also reported difficulty concentrating and that he
3 lacks motivation, is resistant to change, has chronic feelings of
4 worthlessness, and has difficulty controlling his worry. He reported
5 that during a typical day he would wake up and help his fiancé get food
6 ready for their son and then most of the day he would be on his
7 computer while he monitors his son.¹⁹ He also said that he takes a
8 shower once a week to a couple times a month, as he has minimal
9 motivation to shower, which has been a problem since his youth. He
10 shared that he is good with numbers and can handle finances. He also
11 said that he plays video games 10–12 hours of the day. He was
12 observed with appropriate dress and grooming with good eye contact,
13 normal speech, normal mood and congruent affect, no difficulty with
14 attention or concentration with normal insight and normal and logical
15 thought process and content but with no self-esteem. Nurse Marendiuk
16 diagnosed Plaintiff with mild depressive disorder and opined that
17 Plaintiff could understand, remember, and carry out simple and
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22 ¹⁹ AR 283.

1 complex instructions; sustain concentration and persist in work-related
2 activity at a reasonable pace; interact with coworkers, superiors, and
3 the public; and adapt to the usual workplace stresses.

4 A year later, in November 2021, David Morgan, PhD, conducted a
5 psychological evaluation, which included a clinical interview and a
6 mental status examination.²⁰ During the clinical interview, Plaintiff
7 reported that he lacks motivation to complete even small tasks and
8 thus has difficulty getting things done, that he has difficulty sleeping
9 at times, he did not graduate college, that he has not had regular
10 employment in the last two years, and that he spends time on
11 electronic devices. Dr. Morgan observed Plaintiff with a depressed
12 mood along with a cooperative attitude, normal affect, and normal
13 speech, and within normal limits thought process, orientation,
14 perception, fund of knowledge, concentration, abstract thought, insight,
15 and judgment. Dr. Morgan found Plaintiff's immediate memory was
16 challenged as he performed inadequately on his digit span forward and
17 backward. Dr. Morgan diagnosed Plaintiff with depression, moderate to
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22 ²⁰ AR 288–92.

1 marked severity with daily frequency, and found the following
2 limitations:

- 3 • moderately limited in his abilities to learn new tasks, perform
4 routine tasks without special supervision, make simple work-
5 related decisions, be aware of normal hazards and take
6 appropriate precautions, ask simple questions or request
7 assistance, set realistic goals and plan independently, and
8 understand, remember, and persist in tasks by following
9 detailed instructions; and
10 • markedly limited in his abilities to adapt to changes in a
11 routine work setting; communicate and perform effectively in a
12 work setting; maintain appropriate behavior in a work setting;
13 complete a normal workday and workweek without
14 interruptions from psychologically based symptoms; and
15 perform activities within a schedule, maintain regular
16 attendance, and be punctual within customary tolerances
17 without special supervision.²¹
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22 ²¹ AR 289–90.

1 A year after Dr. Morgan’s psychological evaluation, Kenneth
2 Cole, PsyD, conducted a psychological evaluation, which included a
3 clinical interview, a PAI assessment, and a mental status
4 examination.²² Plaintiff reported a chaotic childhood, occasional trouble
5 falling asleep or waking numerous times, fluctuating energy levels,
6 forgetfulness, low self-esteem, and watching YouTube and playing
7 video games but struggling on occasion to enjoy these activities. He
8 relayed that he had only worked once as a newspaper deliverer and
9 that he is unreliable in completing his chores. During the mental
10 status examination, Dr. Cole observed Plaintiff as cooperative and
11 pleasant with greasy hair, inadequate grooming and hygiene, normal
12 speech, and within normal limits thought process and content,
13 orientation and perception, memory and fund of knowledge, and
14 concentration and abstract thought. Dr. Cole found Plaintiff’s “insight
15 and judgment” to be not within normal limits, writing Plaintiff’s
16 “insight is poor.”²³ As to judgment, Dr. Cole noted that Plaintiff said
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21 ²² AR 364–70.

22 ²³ AR 370.

1 that if he smelled smoke in a crowded theater, he would “pull the fire
2 alarm and get out.”²⁴ Dr. Cole found that Plaintiff’s PAI clinical profile
3 suggested “a person who is unhappy, emotionally labile, and probably
4 quite angry on some level.”²⁵ Dr. Cole diagnosed Plaintiff with bipolar
5 disorder (unspecified), persistent depressive disorder, antisocial
6 personality disorder, and borderline personality disorder. When listing
7 Plaintiff’s mental-health symptoms that would affect his ability to
8 work, Dr. Cole listed that Plaintiff’s:
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- 10 • irritability, impulsivity, low self-esteem, and self-destructive
11 behavior would affect his ability to work to a moderate extent.
- 12 • anxiety, attention deficits/distractibility, avoidance/isolation,
13 depressive episodes, mood swings, somatization, suicidal
14 ideation, suspiciousness/mistrust, and thought disorder would
15 affect his ability to work to a marked extent.
- 16 • anger/physical aggression would affect his ability to work to a
17 severe extent.
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21 ²⁴ AR 370.

22 ²⁵ AR 369.

1 When completing the Medical Source Statement, Dr. Cole opined that
2 Plaintiff would be:

- 3 • moderately limited in his abilities to learn new tasks, perform
4 routine tasks without special supervision, make simple-work-
5 related decision, be aware of normal hazards and take
6 appropriate precautions, communicate and perform effectively
7 in a work setting, and understand, remember, and persist in
8 tasks by following very short and simple instructions; and
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10 • markedly limited in his abilities to adapt to changes in a
11 routine work setting, maintain appropriate behavior in a work
12 setting, set realistic goals and plan independently, and
13 understand, remember, and persist in tasks by following very
14 short and simple instructions.
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16 **D. The ALJ's Decision**

17 After the administrative hearing, the ALJ issued a decision
18 denying benefits.²⁶ The ALJ found Plaintiff's alleged symptoms, both as
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21 ²⁶ AR 15–434. Per 20 C.F.R. § 416.920(a)–(g), a five-step evaluation
22 determines whether a claimant is disabled.
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described by Plaintiff and by Plaintiff's fiancé, a neighbor, and a friend, were inconsistent with Plaintiff's medical history.²⁷ As to the medical opinions, the ALJ found:

- the examining medical opinions of Dr. Morgan partially persuasive; and
- the examining medical opinions of Nurse Marendiuk and Dr. Cole and the reviewing opinions of Paul Cherry, PhD, and Maurice Prout, PhD, not persuasive.²⁸

As to the sequential disability analysis, the ALJ found:

- Step one: Plaintiff had not engaged in substantial gainful activity since December 9, 2020, the application date and the alleged onset date.

²⁷ AR 24–25, 28.

²⁸ AR 25–28. Because Plaintiff's appeal focuses on the ALJ's evaluation of the mental-health medical opinions, the Court limits its review to those opinions and does not discuss the physical-health medical opinions.

- 1 • Step two: Plaintiff's medically severe impairments were
- 2 obesity, depression, and personality disorder.
- 3 • Step three: Plaintiff did not have an impairment or
- 4 combination of impairments that met or medically equaled the
- 5 severity of one of the listed impairments.
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- 7 • RFC: Plaintiff had the RFC to perform medium work except:
- 8 he must not be exposed to excessive noise, with warehouse
- 9 or less type noise preferable. The claimant is limited to
- 10 simple, routine, and repetitive tasks at reason levels 1 and
- 11 2. He must not be subject to a production pace, conveyor
- 12 belt, or other non-worker-controlled pace. The claimant
- 13 must have a predictable work environment with no more
- 14 than brief and superficial interaction with the public,
- 15 coworkers, and supervisors, but he could occasionally
- 16 interact with supervisors when necessary for training.
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- 18 • Step four: Plaintiff had no past relevant work.
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- 20 • Step five: considering Plaintiff's RFC, age, education, and work
- 21 history, Plaintiff could perform work that existed in significant
- 22 numbers in the national economy, such as sweeper-cleaner,
- 23 industrial; cleaner, industrial; and cleaner, hospital.²⁹

²⁹ AR 18–30.

1 Plaintiff timely requested review of the ALJ's decision by the
2 Appeals Council and now this Court.³⁰

3 II. Standard of Review

4 The ALJ's decision is reversed "only if it is not supported by
5 substantial evidence or is based on legal error" and such error
6 impacted the nondisability determination.³¹ Substantial evidence is
7 "more than a mere scintilla but less than a preponderance; it is such
8 relevant evidence as a reasonable mind might accept as adequate to
9 support a conclusion."³²
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13 ³⁰ AR 1–6.

14 ³¹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. §
15 405(g); *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012),
16 *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that
17 the court may not reverse an ALJ decision due to a harmless error—
18 one that "is inconsequential to the ultimate nondisability
19 determination").
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21 ³² *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,
22 980 (9th Cir. 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028,
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III. Analysis

Plaintiff argues the ALJ erred by 1) rejecting the disabling opinions of Dr. Morgan and Dr. Cole; 2) failing to conduct an adequate step-three evaluation; 3) improperly discounting Plaintiff's disabling allegations; and 4) failing to conduct an adequate step-five evaluation. The Commissioner argues the ALJ's findings are supported by substantial evidence. As is explained below, the ALJ erred when evaluating the opinions of Dr. Morgan and Dr. Cole.

A. Medical Opinions: Plaintiff establishes consequential error.

Plaintiff argues the ALJ erred when evaluating Dr. Morgan's and Dr. Cole's marked limitations, thereby failing to incorporate these limitations into the RFC. The Court agrees.

1035 (9th Cir. 2007) (The court "must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up).

1. Standard

An ALJ must consider and articulate how persuasive he found each medical opinion and prior administrative finding, including whether it was consistent with and supported by the record.³³ The factors for evaluating persuasiveness include, but are not limited to, supportability, consistency, relationship with the claimant, and specialization.³⁴ Supportability and consistency are the most important factors.³⁵ When considering the ALJ's findings, the Court is constrained to the reasons and supporting explanation offered by the ALJ.³⁶

³³ 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022) (“Even under the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence.”).

³⁴ 20 C.F.R. § 416.920c(c)(1)–(5).

³⁵ *Id.* § 416.920c(b)(2).

³⁶ See *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

2. Dr. Morgan

1 time, such as video games, and can understand instructions if given
2 sufficient explanation.”³⁹

3 The first reason given by the ALJ is not a legitimate reason
4 supported by substantial evidence to find Dr. Morgan’s opinion
5 unsupported by either his psychological evaluation or the record.
6 Dr. Morgan’s psychological evaluation included not only a clinical
7 interview but also a mental status examination and a review of DSHS
8 records. Dr. Morgan noted Plaintiff’s depressed mood and deficits in
9 immediate memory.⁴⁰ Moreover, Plaintiff’s reported background and
10 symptoms during this clinical interview and mental status
11 examination were largely consistent with those during Plaintiff’s
12 evaluation with Dr. Cole and during his counseling sessions.⁴¹ The ALJ
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17 ³⁹ AR 27 (internal citations omitted).

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19 ⁴⁰ AR 288–92.

20 ⁴¹ See *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017)

21 (Psychologist’s opinion was based on a clinical interview and mental
22 status evaluation and partially relied on the claimant’s self-reports;
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1 failed to consider Dr. Morgan's findings against the longitudinal record,
2 which included behavioral health/counseling records from December
3 2021 through March 2023. Lastly, Dr. Morgan did not opine that
4 Plaintiff's difficulties with concentration, focus, irritability, and
5 interpersonal interactions were caused by a cognitive impairment, but
6 rather that such were caused by his depression and personality
7 disorder.
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9 The second reason the ALJ discounted Dr. Morgan's more
10 limiting opinions—that they were inconsistent with Plaintiff's reported
11 activities—is also not supported by substantial evidence on this record.
12 Even though Plaintiff reported to Dr. Morgan (and Dr. Cole) that he
13 spends a considerable part of his day playing video games, both
14 psychologists found that Plaintiff would have either moderate or
15 marked limitations in his abilities to perform routine tasks without
16 special supervision, adapt to changes in a routine setting, maintain
17 appropriate behavior in a work setting, and communicate and perform
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21 partial reliance on self-reported symptoms was not a valid reason to
22 reject the opinion.).
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1 effectively in a work setting.⁴² Therefore, per the evaluating
2 psychologists, Plaintiff's ability to play video games was not
3 inconsistent with his reported difficulties hyper fixating on things or
4 interacting with others.⁴³ The ALJ's failure to meaningfully evaluate
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7 ⁴² The "additional explanation" on the form containing the reviewing
8 opinion of Dr. Prout mistakenly lists that Dr. Morgan's November 2021
9 psychological evaluation has "no marked limitations in functioning" but
10 then states "no objective clinical findings presented to sustain any of
11 the moderate to marked limitations noted in the [medical source
12 statement]." AR 84, 86. The form also mistakenly states that there was
13 no follow-up mental-health treatment, but consistent with
14 Dr. Morgan's recommendation for mental-health treatment, Plaintiff
15 began counseling two months after Dr. Morgan's evaluation. *Compare*
16 AR 84–86 *with* AR 290.
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19 ⁴³ *See Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017)
20 (recognizing the fact the claimant could participate in some daily
21 activities did not contradict the evidence of otherwise severe problems
22 that she encountered in her daily life during the relevant period).
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1 the consistency between Dr. Morgan's and Dr. Cole's evaluations and
2 opinions caused the ALJ to give undue weight to Plaintiff's ability to
3 play videogames for an extended period.

4 Moreover, the ALJ did not discuss whether Dr. Morgan's
5 evaluation and opinions were consistent with the later counseling
6 records, which showed inadequate hygiene and grooming, an
7 observation also made by Dr. Cole. In addition, the ALJ did not discuss
8 whether counseling had any impact lessening Plaintiff's symptoms.⁴⁴
9 While the ALJ need not discuss each piece of evidence, here, the ALJ
10 ignored "significant probative evidence that bears on the disability
11 analysis" by largely ignoring the counseling records, which were the
12 primary treatment notes in this record, and by failing to discuss the
13 consistency between Dr. Morgan's and Dr. Cole's psychiatric
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18 ⁴⁴ *Cf. Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) ("[T]he fact
19 that claimant may be one of millions of people who did not seek
20 treatment for a mental disorder until late in the day is not a
21 substantial basis on which to conclude that Dr. Brown's assessment of
22 claimant's condition is inaccurate.").

1 evaluations.⁴⁵ An ALJ may not cherry pick evidence to support a
2 conclusion while ignoring other competent evidence in the record.⁴⁶ The
3 ALJ did so in this matter.

4 3. Dr. Cole

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6 As mentioned above, one year after Dr. Morgan's evaluation,
7 Dr. Cole completed a psychological evaluation, which included a
8 clinical interview, a PAI assessment, and a mental status
9 examination.⁴⁷ The ALJ was not persuaded by Dr. Cole's opinions
10 because his:

11 Assessments are not supported by the results of his own
12 evaluation, which found the claimant's thought process,
13 mood, perception, memory, fund of knowledge, and capacity
14 for abstract thought to be normal. Dr. Cole's finding of poor

15 ⁴⁵ *Kilpatrick v. Kijakazi*, 35 F.4th 1187, 1193 (9th Cir. 2022).

16 ⁴⁶ *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) ("Although it
17 is within the power of the Secretary to make findings concerning the
18 credibility of a witness . . . , he cannot reach a conclusion first, and then
19 attempt to justify it by ignoring competent evidence in the record that
20 suggests an opposite result.").

21 ⁴⁷ AR 364–70.

1 insight likewise doesn't follow from the answer given by the
2 claimant to a hypothetical question involving smoke in a
3 crowded theater, which the undersigned finds to be a slight
4 abnormality on a single question that does not support
5 marked limitations. The undersigned also does not find
6 Dr. Cole's opinion to be consistent with the claimant's
7 overall objective record, which shows the claimant to have
8 normal though[t] process, normal concentration, and good
9 memory.⁴⁸

7 Again, the ALJ focused on the non-supportive aspects of the evaluation
8 without discussing that Dr. Cole determined that Plaintiff had
9 symptoms of anger/physical aggression, anxiety, attention
10 deficits/distractibility, avoidance/isolation, depression, irritability,
11 impulsivity, low self-esteem, mood swings, self-destructive behavior,
12 somatization, suicidal ideation, suspiciousness/mistrust, and thought
13 disorder. These noted symptoms were largely based on Plaintiff's
14 reported symptoms; however, Dr. Cole did observe Plaintiff with
15 inadequate grooming and hygiene, and Plaintiff reported some of these
16 symptoms to Dr. Morgan and was observed with and reported some of
17 these symptoms to his counselor.
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22 ⁴⁸ AR 28.
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1 Second, the ALJ confused Dr. Cole's finding that Plaintiff's
2 "insight is poor" with Dr. Cole's notation as to Plaintiff's judgment,
3 which appeared to be normal. While Dr. Cole did not add comments as
4 to why he found Plaintiff's insight to be poor in that section of his
5 report, in another portion of his report he discussed Plaintiff's PAI
6 clinical profile and that Plaintiff "appears uncertain about major life
7 issues and has little sense of direction or purpose in his life as it
8 currently stands . . . [h]e is also quite impulsive and prone to behaviors
9 likely to be self-harmful or self-destructive."⁴⁹ These findings by
10 Dr. Cole support his finding that Plaintiff's insight was poor. The ALJ
11 again cherry-picked evidence to support a conclusion while ignoring
12 other competent evidence.⁵⁰ This error was compounded by the ALJ
13 failing to discuss the counseling records, beyond mentioning that
14 Plaintiff was attending mental health counseling to work on managing
15 his conditions.
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21 ⁴⁹ AR 369.

22 ⁵⁰ See *Gallant*, 753 F.2d at 1456.

1 On this record, the ALJ's evaluation of Dr. Cole's and
2 Dr. Morgan's psychological evaluations and the opined moderate and
3 marked limitations is not supported by substantial evidence. On
4 remand, the ALJ is to call a medical expert to offer an opinion as to
5 Plaintiff's mental-health impairments, with the benefit of the
6 psychological evaluations and the counseling records.
7

8 **B. Other issues: the ALJ is to reevaluate.**

9 The ALJ found that Plaintiff did not meet or equal a listing and
10 that Plaintiff's statements about the intensity, persistence, and
11 limiting effect of his symptoms were inconsistent with his "medical
12 history, which does not show the kinds of serious symptoms, amount of
13 treatment, and level of dysfunction that would be expected were the
14 claimant as limited as he alleges."⁵¹ Because of the ALJ's errors when
15 evaluating Dr. Morgan's and Dr. Cole's medical opinions, this matter is
16 remanded for a new sequential evaluation.
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18 On remand, the ALJ is to reevaluate Plaintiff's reported
19 symptoms. When doing so, if the ALJ again discounts Plaintiff's
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22 ⁵¹ AR 24.
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1 reported symptoms because he has “the capacity to regularly attend
2 mental health counseling to address and working [sic] on managing his
3 conditions,”⁵² the ALJ is to meaningfully explain how Plaintiff’s once-a-
4 month counseling sessions, during which Plaintiff was often observed
5 with hygiene issues, is inconsistent with Plaintiff’s reported symptoms,
6 which included getting off-task and becoming fixated on things other
7 than his hygiene. Moreover, the ALJ may not ignore the coping
8 mechanisms Plaintiff employed to manage his symptoms.⁵³

10 Also, on remand, the ALJ is to call a medical expert to offer an
11 opinion as to 1) whether Plaintiff’s low energy stems from Plaintiff’s
12 depression or another source, and 2) whether Plaintiff’s ability to
13 concentrate on video games is consistent with basic work abilities. Both
14 Dr. Morgan and Dr. Cole were aware of Plaintiff’s extended time spent
15 playing video games but still found moderate or marked limitations
16 with learning new tasks, performing routine tasks without special
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20 ⁵² AR 24.

21 ⁵³ *Glanden v. Kijakazi*, 86 F.4th 838, 845 (9th Cir. 2023) (citing SSR 16-
22 3p).

1 supervision, adapting to changes in a routine work setting,
2 communicating and performing effectively in a work setting, and
3 maintaining appropriate behavior in a work setting. Finally, if the ALJ
4 again discounts Plaintiff's reported symptoms because he lacks
5 significant work history, the ALJ is to consider whether Plaintiff's age
6 and mental-health impairments contributed to his lack of significant
7 work history.⁵⁴

9 **C. Step Five: vocational expert testimony is needed on**
10 **remand.**

11 Plaintiff argues the ALJ erred at step two because 1) the RFC's
12 limitation to simple, routine, and repetitive tasks precludes the
13 performance of level-two reasoning jobs, yet two of the three identified
14 jobs require level-two reasoning; and 2) the RFC, which limits Plaintiff
15 to brief and superficial interaction with supervisors, prevents Plaintiff
16 from advancing past the training period of a job. In response, the
17 Commissioner argues that neither of these arguments have merit.

21 ⁵⁴ See *Lingenfelter*, 504 F.3d at 1038; 20 C.F.R. § 416.929 (work record
22 can be considered in assessing reported symptoms).

1 The Ninth Circuit’s decision in *Rounds v. Commissioner Social*
2 *Security Administration* guides the first issue.⁵⁵ Here, as in *Rounds*,
3 there may be an apparent conflict between Plaintiff’s RFC, which
4 limits him to “simple, routine, and repetitive tasks at reason levels 1
5 and 2,” and two of the jobs selected by the vocational expert and
6 adopted by the ALJ, which require level-two reasoning.⁵⁶ Level-two
7 reasoning requires the worker to “[a]pply commonsense understanding
8 to carry out detailed but uninvolved written or oral instructions. . . .”⁵⁷
9 In *Rounds*, the Ninth Circuit determined that “[o]nly tasks with more
10 than one or two steps would require ‘detailed’ instructions.”⁵⁸
11 Therefore, there appears to be a conflict between limiting Plaintiff to
12 simple tasks but then allowing him to perform a job requiring level-two
13 reasoning. On remand, the vocational expert is to address whether
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18 ⁵⁵ 807 F.3d 996, 1003–04 (9th Cir. 2015).

19 ⁵⁶ The two identified jobs that are level-two reasoning are: cleaner,
20 industrial (DOT 381.687-018) and cleaner, hospital (DOT 323.687-010).

21 ⁵⁷ Dictionary of Occupational Titles, Appendix C.

22 ⁵⁸ 807 F.3d at 1004.

1 there is a conflict between the RFC, if it limits Plaintiff to “simple,
2 routine, and repetitive tasks,” and a job requiring level-two reasoning.

3 To address Plaintiff’s second concern, the ALJ on remand is to
4 obtain vocational expert testimony as to whether an RFC limiting
5 Plaintiff to occasional interaction with supervisors during the training
6 period will preclude the-then identified jobs.⁵⁹

8 IV. Conclusion

9 Plaintiff establishes the ALJ consequentially erred. The ALJ is to
10 develop the record, including calling a medical expert and a vocational
11 expert, and reevaluate—with meaningful articulation and evidentiary
12 support—the sequential process.

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14
- 15 1. The ALJ’s nondisability decision is **REVERSED**, and this
16 **matter is REMANDED to the Commissioner of Social**
17 **Security for further proceedings pursuant to**
18 **sentence four of 42 U.S.C. § 405(g).**
19

20

21 ⁵⁹ See generally *Leitz v. Kijakazi*, 2023 WL 4342114 (9th Cir. July 5,
22 2023) (unpublished opinion).

2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 11 and 16**, enter **JUDGMENT** in favor of the **Commissioner**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 10th day of April 2025.



EDWARD F. SHEA
Senior United States District Judge